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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/777,801 | 02/06/2001 | Gloria Falla | 204,860 | 4003 |

7590

01/28/2004

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| EXAMINER |
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HALE, GLORIA M

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| ART UNIT | PAPER NUMBER |
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3765

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DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No.
10/777,801Applicant(s)
FallaExaminer
Gloria HaleArt Unit
3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 27-2003 (Amendment B); IDS of 10-9-03 and IDS of 7-16-03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 145-186 is/are pending in the application.
- 4a) Of the above, claim(s) 147, 155, and 169 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 145, 146, 148-154, 156-168, and 170-186 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5, 11 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 145-154, 156-168 and 170-186 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 146, 148-154, 157, 160, 161, 163, 167, 168, 171, 174, 175, 177, 181 and 183, the claims have not been written in the method step form as indicated in the preamble in that the subject matter added with each claim has not been written as a further method step but only describes the finished product or component. The method step necessary to create that component or product should be claimed in the claims.

In claims 145, 148, 149, 158, 166, 172, 180, 184-186 the cutting step or finished edge has been claimed. However, the exact structure of the finished edge is not clearly claimed as being the exact edge of the undergarment which is not hemmed or sewn in anyway but is rather a cut edge.

It is also not clear as to whether the cut edge is fused there along to avoid the fraying or as to what method step is used which avoids the fraying. The claim as presently written only claims that the laminate is cut along its periphery to form a finished edge. One may also conclude that the

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finished edge may be formed by hemming or stitching in that the recitation “to form the finished edge” does not limit the edge to the edge being only a cut edge. As claimed the recitation “to form a finished edge that resists unraveling” may also include sewing along the edge or folding it over and stitching such as in a rolled hem. The method of die cutting the edge with heat or whatever other method applicant uses to form the unraveled edge should also be included since it is a necessary step in forming the appearance of a “cut edge” that is not sewn or hemmed. Just cutting the edge alone would not make the edge resist unraveling. Another method step is necessary to make the cut edge resistant to unraveling.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 145,146,148,149,151,152,156,157,163,166,170,171 and 177 are rejected under 35 U.S.C. 102(b) as being anticipated by Gluckin (US 5,154,659).

In regard to claims 145,146,148,149,151,152,156,157,163,166,170,171 and 177, Gluckin discloses a method, as broadly claimed and as best understood, of forming an undergarment, a brassiere, comprising inserting an adhesive layer (80) between first (78) and second fabric layer (92) causing the adhesive layer (with the heat sealer (96)) to form a laminate and removing the

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selvage (with a conventional trim die cutter (109)) from the laminate at the outer periphery to form a finished undergarment edge which resists unraveling. The edge of the bra is scalloped and the laminate is molded into a breast cup region. (See Gluckin, col. 3, line 5 - col. 4, line 31 and figures 9,11 and 15).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 150 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5, 154,659).

In regard to claim 150 Gluckin discloses the invention substantially as claimed and as discussed above. However, Gluckin does not specifically disclose the selvage as specifically being between ½ inch to 1 inch. The Examiner takes Official Notice that it is well known to have a selvage within the claimed range on molded garment components in order to allow for the smooth molded edge on the garment work piece and the smooth placement of the work piece into the mold so that when the work piece is placed in the mold the selvage of the work piece extends beyond the mold die for easier grasping by the worker and to ensure that the fabric layers do not move or shift apart while the work piece is in the die. This is seen in Gluckin in figure 9 which shows a

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selvage within the claimed range and then the finished product in figure 15. Using the corners of the work piece in figure 9 with the decorative die cuts within the work piece as reference points it is seen that the selvage is within the claimed ranges even though the exact measurements have not been stated by Gluckin in the specification. Accordingly it would have been obvious to one having ordinary skill in the art of molding such work pieces to construct the work piece with a selvage edge and to find the optimum range of selvage edge measurements to allow for the appropriate amount of selvage material for placing the work piece in the mold for the reasons stated above. If a worker picks a selvage amount that is not within the claimed range and is too small the work piece could shift and separate while in the mold die and would not be laminated properly in addition to the fact that there would not be an appropriately sized selvedge edge for the worker to grasp the work piece. This edge would then be cut away from the garment as seen in Gluckin when the work piece is laminated into the garment form. Finding the appropriate selvedge edge size such as that which has been claimed would be within the normal skill level of such a worker in the art and therefore obvious.

7. Claims 180,185 and 186 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

8. Claims 153, 154, 158-162,164,165,167,168,172-176,178, 179, 181-184 are would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set

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forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

None of the cited references, alone or in combination, disclose the non-bonded regions, abutted pieces in either fabric layer, the bridging piece, the tubular undergarment form, the underwire and /or the additional fabric members including those claimed as claimed in claims 153, 154, 158-162, 164, 165, 167, 168, 172-176 and 178-186.

The Information Disclosure Statements have been reviewed. However, the IDS submitted on 7-16-03 by facsimile was a re-submission of a lost IDS that was originally submitted with the application in a separate box and lost in the USPTO. The 7-16-03 facsimiled IDS was requested by the examiner and was not submitted with any documents. The Examiner accessed the Patent Files and obtained copies of the US patents listed on the IDS. However, the numerous Foreign and non-patent literature cited was not available to the Examiner. Therefore, it is requested that applicant's representative re-submit another IDS with copies of all Foreign references and non-patent literature with the next response so that all references that applicant desires to be reviewed are reviewed.

The Examiner agrees with the Applicant's representative in regard to the status of the generic and non-generic claims. The present status of the claims is being re-stated for clarification and is as follows: claims 145, 148-153, 156, 158-160, 163-167, 170, 172, 173, 177-180, 185 and 186 are generic. Claims 147, 155 and 169 are to the panty which is non-elected. 146, 154, 157, 161, 162, 168, 171, 174-176, 181-184 are to the brassiere.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure..
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is (703) 308-1282. The New Official Facsimile Number is 703-872-9306 for submission of formal papers.



Gloria Hale

Primary Patent Examiner- AU 3765

January 23, 2004